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HOUSE BILL 153

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Patricia A. Lundstrom

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO TRADE PRACTICES; CREATING A VOLUNTARY CERTIFICATION  
MARK PROGRAM FOR INDIAN ARTS AND CRAFTS; CREATING AN ADVISORY  
BOARD; PROVIDING POWERS AND DUTIES; CREATING A FUND;  
PRESCRIBING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE  
NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-33-6 NMSA 1978 (being Laws 1959,  
Chapter 133, Section 4, as amended) is amended to read:

"30-33-6. INQUIRY AS TO PRODUCER--DUTY OF INQUIRY--  
ELECTION TO LABEL AUTHENTIC INDIAN ARTS AND CRAFTS.--

A. It is the duty of every person selling or  
offering for sale a product that is represented to be authentic  
Indian arts or crafts to make due inquiry of [his] suppliers  
concerning the true nature of the materials, product design and

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1 process of manufacture to determine whether the product may be  
2 lawfully represented as authentic Indian arts or crafts.

3 B. Each person may elect to label, affix a  
4 certification mark or otherwise clearly and conspicuously  
5 disclose as authentic Indian arts and crafts all articles that  
6 are authentic Indian arts and crafts in accordance with the  
7 Indian Arts and Crafts Sales Act and regulations adopted  
8 pursuant to that act.

9 C. Consistent with the purposes of the Indian Arts  
10 and Crafts Sales Act, regulations adopted under that act may  
11 specify designations other than "authentic Indian arts and  
12 crafts", including a designation such as "Indian crafted", for  
13 authorized labeling as Indian arts and crafts."

14 Section 2. A new section of the Indian Arts and Crafts  
15 Sales Act, Section 30-33-6.1 NMSA 1978, is enacted to read:

16 "30-33-6.1. [NEW MATERIAL] CERTIFICATION MARK PROGRAM--  
17 FEES.--

18 A. The cultural affairs department shall establish  
19 a certification mark program for authentic Indian arts and  
20 crafts created or sold in New Mexico and shall promulgate  
21 regulations establishing standards for products entitled to  
22 have affixed a certification mark. The certification mark  
23 program is a voluntary program through which a person may  
24 attach a certification mark to authentic Indian arts and crafts  
25 that satisfy specified design and production standards.

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1           B. Persons applying for the right to participate in  
2 the certification mark program may be required to pay an  
3 application fee and an annual registration fee. The  
4 application fee shall not exceed two hundred fifty dollars  
5 (\$250). The annual registration fee shall not exceed one  
6 hundred dollars (\$100)."

7           Section 3. A new section of the Indian Arts and Crafts  
8 Sales Act, Section 30-33-6.2 NMSA 1978, is enacted to read:

9           "30-33-6.2. [NEW MATERIAL] INDIAN ARTS AND CRAFTS  
10 ADVISORY BOARD.--

11           A. The "Indian arts and crafts advisory board" is  
12 created to advise the cultural affairs department regarding the  
13 implementation of the certification mark program. Staff for  
14 the board shall be provided by the department.

15           B. The board consists of seven members as follows:

16                   (1) an Indian qualified to determine the  
17 authenticity of jewelry or metalwork as being Indian handmade  
18 or Indian crafted;

19                   (2) an Indian qualified to determine the  
20 authenticity of beadwork or quillwork as being Indian handmade  
21 or Indian crafted;

22                   (3) an Indian qualified to determine the  
23 authenticity of pottery as being Indian handmade or Indian  
24 crafted;

25                   (4) an Indian qualified to determine the

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1 authenticity of textiles or fiber arts as being Indian handmade  
2 or Indian crafted;

3 (5) an Indian qualified to determine the  
4 authenticity of basketry as being Indian handmade or Indian  
5 crafted;

6 (6) an Indian qualified to determine the  
7 authenticity of painting, drawing or other graphic arts as  
8 being Indian handmade or Indian crafted; and

9 (7) an Indian qualified to determine the  
10 authenticity of carving or sculpture as being Indian handmade  
11 or Indian crafted.

12 C. The secretary of cultural affairs may seek  
13 advice from other persons experienced in producing or  
14 determining the authenticity of authentic Indian arts and  
15 crafts as deemed necessary to determine appropriate standards  
16 for the certification mark program established pursuant to  
17 Section 30-33-6.1 NMSA 1978.

18 D. Members of the board shall be appointed by and  
19 serve at the pleasure of the governor.

20 E. The board shall annually elect a chair and other  
21 officers as it deems necessary. A simple majority of the board  
22 members currently serving constitutes a quorum.

23 F. The board shall hold at least one regular  
24 meeting each year and shall meet at such other times as deemed  
25 necessary by the chair, a majority of board members or the

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1 secretary of cultural affairs.

2 G. Members of the board are entitled to receive per  
3 diem and mileage as provided in the Per Diem and Mileage Act  
4 and shall receive no other compensation, perquisite or  
5 allowance."

6 Section 4. A new section of the Indian Arts and Crafts  
7 Sales Act, Section 30-33-6.3 NMSA 1978, is enacted to read:

8 "30-33-6.3. [NEW MATERIAL] INDIAN ARTS AND CRAFTS FUND  
9 ESTABLISHED.--The "Indian arts and crafts fund" is created in  
10 the state treasury. The fund consists of money received by the  
11 cultural affairs department through the certification mark  
12 program, legislative appropriations to the fund, gifts, grants,  
13 donations and bequests. Money in the fund shall not revert to  
14 any other fund at the end of a fiscal year. The fund shall be  
15 administered by the cultural affairs department and money in  
16 the fund is appropriated to the cultural affairs department to  
17 implement the certification mark program. Money in the fund  
18 shall be disbursed on warrants signed by the secretary of  
19 finance and administration pursuant to vouchers signed by the  
20 secretary of cultural affairs or the secretary's authorized  
21 representative."

22 Section 5. Section 30-33-7 NMSA 1978 (being Laws 1973,  
23 Chapter 163, Section 5, as amended) is amended to read:

24 "30-33-7. UNLAWFUL ACTS.--It is unlawful for any person  
25 to:

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1           A. sell or offer for sale any products represented  
2 to be Indian handmade or authentic Indian arts and crafts  
3 unless such products are in fact Indian handmade or authentic  
4 Indian arts and crafts;

5           B. sell or offer for sale any products represented  
6 to be Indian crafted unless such products are in fact Indian  
7 crafted;

8           C. represent that any Indian arts and crafts  
9 product is made of a material, including natural material,  
10 unless it is made of that material;

11          D. fail to disclose in writing that any Indian arts  
12 and crafts product is made of treated material, reconstructed  
13 material or synthetic material;

14          E. solicit or buy for resale as authentic Indian  
15 arts and crafts any products that are known in fact not to be  
16 authentic; [ø#]

17          F. affix a certification mark to any products  
18 represented as authentic Indian arts and crafts that do not  
19 satisfy design and production standards established by the  
20 certification mark program of the cultural affairs department;  
21 or

22          [F-] G. prepare, disseminate or otherwise engage in  
23 any unfair or deceptive trade practice, including any false,  
24 misleading or deceptive advertising, or any unconscionable  
25 trade practice, regarding Indian arts or crafts. For the

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1 purpose of this subsection, "unfair or deceptive trade  
2 practice" and "unconscionable trade practice" mean "unfair or  
3 deceptive trade practice" and "unconscionable trade practice"  
4 as those terms are defined in Section 57-12-2 NMSA 1978."

5 Section 6. Section 30-33-11 NMSA 1978 (being Laws 1977,  
6 Chapter 334, Section 8, as amended) is amended to read:

7 "30-33-11. ADMINISTRATIVE REGULATIONS.--The attorney  
8 general, [~~and the New Mexico office of~~] the Indian affairs  
9 department and the cultural affairs department are authorized  
10 jointly to promulgate necessary regulations, pursuant to the  
11 Administrative Procedures Act, to further the purpose and  
12 implement the provisions of the Indian Arts and Crafts Sales  
13 Act."

14 Section 7. TEMPORARY PROVISION.--The cultural affairs  
15 department shall report to the appropriate interim legislative  
16 committee no later than October 1, 2007 on the status of  
17 implementation of a certification mark program.

18 Section 8. APPROPRIATION.--Three hundred thousand dollars  
19 (\$300,000) is appropriated from the general fund to the  
20 cultural affairs department for expenditure in fiscal year 2008  
21 and subsequent fiscal years to implement the certification mark  
22 program. Any unexpended or unencumbered balance remaining at  
23 the end of a fiscal year shall not revert to the general fund.